



**STATE OF TENNESSEE  
DEPARTMENT OF COMMERCE AND INSURANCE  
REAL ESTATE APPRAISER COMMISSION  
500 JAMES ROBERTSON PARKWAY  
NASHVILLE, TENNESSEE 37243-1166  
615-741-1831**

**September 8, 2008  
Second Floor Conference Room, Andrew Johnson Tower**

The Tennessee Real Estate Appraiser Commission met September 8, 2008, at 9:30 a.m. in Nashville, Tennessee, at the Andrew Johnson Tower in the second floor conference room. Chairman, James E. Wade, Jr., called the meeting to order and the following business was transacted.

**COMMISSION MEMBERS PRESENT**

James E. Wade, Jr.  
Herbert Phillips  
Marc Headden  
William R. Flowers, Jr.  
Thomas R. Carter  
Kenneth Woodford

**COMMISSION MEMBERS ABSENT**

Jason West  
Dr. Edward A. Barylak  
Najanna Coleman

**STAFF MEMBERS PRESENT**

Nikole Avers, Administrative Director  
Jesse D. Joseph, Staff Attorney

**ADOPT AGENDA**

The Commission voted to adopt the agenda. Mr. Phillips made the motion to accept the agenda and it was seconded by Mr. Headden. The motion carried unopposed.

**MINUTES**

The July 2008 minutes were reviewed. Mr. Headden made the motion to accept the minutes as written. It was seconded by Mr. Phillips. The motion carried unopposed.

**GENERAL BUSINESS**

**Staffing Issues and the Potential Problems with the ASC Review**

The Commission conducted a follow-up discussion to the July 14, 2008 discussion that was held with Assistant Commissioner, Steve Majchrzak, pertaining to continued staffing issues that the Real Estate Appraiser Commission has had since the end of May, 2008. The Real Estate

Appraiser Commission is currently down to only one employee: Administrative Director, Nikole Avers. Due to a hiring freeze and the State's budget issues (Voluntary Buyout Program) no assistants are currently assigned to this Commission. The move of Regulatory Board from one building to another afforded the opportunity for the smaller staff programs (10) to be moved into one area with four director's and a current staff of three assistants. In order to best pool the resources of these staff members, cross training was planned to be implemented. The Director's would still be the resources specialized differences of each of these programs, but the intent was to have a staff of at least four for all those board that are cross trained. At this time, the three current staff members have been helping with directing phone calls and working the deposits from the department of revenue and the cashier's office, but no training specific to the Appraiser Commission has been conducted. Commission members discussed how to best address this problem. Staff and legal counsel was questioned as to what resources were needed. There was a consensus among Commission members that additional resources were needed, and this matter needed to be addressed promptly because there is a field review scheduled for January by the federal oversight agency, the Appraisal Subcommittee of Congress. After much discussion of the proper procedure for addressing these needs, Mr. Flowers recommended that Commission Member(s) meet with the Assistant Commissioner to discuss concerns over staffing, and, if necessary, meet with the Commissioner for Commerce and Insurance or the Governor. Mr. Phillips seconded that motion and express concerns over critical staffing needs. The motion carried unanimously.

### **Applicant Conference**

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**Chad Ehler** made application as a registered trainee to become a certified residential appraiser. Ms. Avers stated he checked "yes" to character question three which reads, "Have you ever been convicted of, pled guilty, or pled no contest to any criminal offense, or is there any criminal charges now pending against you". Mr. Ehler was called to the guest microphone to speak to the Commission pertaining to this matter. He stated in February of 2008 he was charged with driving under the influence and failure to maintain lane and reckless driving. He stated the matter was still pending and he was in "a holding pattern" on that matter at this time. Legal counsel questioned the applicant on the prior conviction in 1999. He was arrested and charged in January of 1999 for possession of a controlled substance with intent to distribute, which is a felony in Tennessee. He pled guilty eight months later and was given the opportunity to enter the Community Corrections program in Davison County. Mr. Ehler stated, to the Commission, that that matter was addressed at the time of his trainee application in February 2006 and that he completed all requirements of that conviction subsequent to the Commission's decision to allow him to be registered as a trainee and that sentence expired in October. Mr. Joseph, legal counsel, questioned the current arrest. Mr. Ehler stated he is still waiting arraignment in that matter. He further stated he possibly lose his driving privileges, other than work related driving, possibly a year of probation and some fines as well. He stated, pertaining to correcting this behavior, he no longer consumes alcohol and he does not consider drunk driving to be acceptable and he intends to move forward by being honest and functioning with integrity and character. Mr. Headden made a motion to put this matter off until the DUI matter is finalized, with a date of six months to table this matter. Mr. Flowers seconded the motion. During discussion Ms. Avers asked if the matter was resolved before the six months ended, could the matter be represented. Mr. Headden stated he would prefer for the six months to stand. The vote was called and the motion carried unanimously.

## **Experience Interviews**

**Kimberly M. Maynard** submitted a letter of request for reconsideration of previously required courses stemming from her July experience interview. A reconsideration of was granted in August; however, the course that she was granted to take, she was already required to take from the July meeting. She requested approval this month to take two on-line McKissock courses: 2 to 4 Family Finesse (7 hours) & Income Capitalization (7 hours). Mr. Headden stated he was fine with those courses and recommended approval. Mr. Phillips made a motion to accept the recommendation. Mr. Woodford seconded that motion. The motion carried unanimously.

**James W. Coffman** submitted a letter of request for clarification of previous requirements courses stemming from his November 2007 experience interview. He posed three questions to the Commission in an e-mail communication dated August 19, 2008.

1. The letter from the Commission subsequent to the experience interview required completion of a report writing class. The letter did not specify if this was to be a 1, 15, 30, or 45 hour course. Which course does the Commission intend for this applicant to complete?
2. Is a demonstration report required after the report writing course is complete?
3. Should the applicant attend a Commission meeting to discuss these matters?

Mr. Coffman was in attendance at the September 8, 2008 Commission meeting to answer questions. The Commission discussed the needed education for this applicant to complete. Mr. Woodford recommended the applicant complete the thirty (30) hour General Appraisal Report Writing & Case Study course and complete one (1) demonstration report of an income producing property based on leases, render a market value opinion, and that would meet FIRREA requirements. Mr. Phillips seconded that motion. The motion carried unanimously.

**Angela Russell** attended a five hundred (500) hour experience audit. Mr. Wade was the reviewer and stated the reports appeared to be in good shape.

**Clayton Wallace Haehl** made application to upgrade from a certified residential appraiser to become a certified general appraiser. Mr. Flowers and Mr. Wade were the reviewers and stated that the reports were satisfactory and experience credit should be granted. Mr. Woodford made the motion to accept the recommendation and Mr. Headden seconded the motion. The motion carried unopposed.

**Chad M. Ehlert** made application to upgrade from a registered trainee to certified residential appraiser. Mr. Flowers was the reviewer and stated his reports were satisfactory recommended approval of his experience and recommended approval to stand for one (1) year to allow some time for the character question matter to be resolved as discussed in the applicant conference. Mr. Phillips made the motion to accept the recommendation and Mr. Woodford seconded the motion. The motion carried unopposed.

**Michael S. Fox** made application to upgrade from a registered trainee to become a licensed appraiser. Mr. Headden was the reviewer and stated that the reports were satisfactory and experience credit should be granted. Mr. Flowers made the motion to accept the recommendation and Mr. Phillips seconded the motion. The motion carried unopposed.

**Michelle Garrett** made application to upgrade from a licensed appraiser to become a certified general appraiser. Mr. Headden and Mr. Phillips were the reviewers and stated that the reports illustrated competency and experience credit should be granted. Mr. Flowers made the motion to accept the recommendation and Mr. Woodford seconded the motion. The motion carried unopposed.

**Brent R. Roggeman** made application to upgrade from a registered trainee to become a certified residential appraiser. Mr. Headden was the reviewer and stated that the reports were satisfactory and experience credit should be granted. Mr. Flowers made the motion to accept the recommendation and Mr. Woodford seconded the motion. The motion carried unopposed.

**Kevan Trevis Smith** made application to upgrade from a registered trainee to become a certified residential appraiser. Mr. Woodford was the reviewer and stated that the reports were satisfactory and experience credit should be granted. Mr. Flowers made the motion to accept the recommendation and Mr. Headden seconded the motion. The motion carried unopposed.

**Brian Brady Livesay** made application as an out of state licensed appraiser to be granted a licensed appraiser credential in Tennessee. Mr. Woodford was the reviewer and stated that there was some question of the compliancy of the reports submitted for experience credit. Two of the reports were identified as "evaluations" of properties in Tennessee. Two of these reports may constitute unlicensed conduct, but that was unclear at this point. On the appraisal submitted for a property in Virginia, there was some question about the adjustment line for 12 acres and a barn at a \$40,000 adjustment. Mr. Woodford recommended postponing the consideration of this applicant for experience credit until a legal interpretation could be provided on whether:

1. The two reports labeled "evaluations" could be considered for experience credit.
2. If there was a violation of Tennessee licensing requirements.

Mr. Headden made the motion to accept the recommendation and Mr. Flowers seconded the motion. The motion carried unopposed.

**Jeremy Wayne Stephens** made application to upgrade from a registered trainee to become a certified residential appraiser. Mr. Carter was the reviewer and stated that additional reports should be selected that illustrated use of the cost and income approaches. Mr. Headden made the motion to accept the recommendation and Mr. Phillips seconded the motion. The motion carried unopposed.

**Jeff Ball** made application to upgrade from a registered trainee to become a certified residential appraiser. Mr. Carter was the reviewer and stated that additional reports should be selected that illustrated use of the cost and income approaches. Mr. Headden made the motion to accept the recommendation and Mr. Woodford seconded the motion. The motion carried unopposed.

### **Education Committee Report**

Dr. Baryla reviewed the education submitted his recommendations via fax to Ms. Avers to present before the Commission. On his report he recommended approval of all courses as written, except the course "ASFMRA 79<sup>th</sup> Annual Meeting" submitted by the ASFMRA because the content of the course had less than two hours that met the specific requirement of continuing education as per Tennessee requirements. Mr. Flowers made the motion to accept Dr. Baryla's recommendation. Mr. Phillips seconded that motion. The motion carried unopposed.

## EDUCATION COMMITTEE REPORT

**September 8, 2008**

Course Name	Course Number	Course Name	Instructors	Hrs.	Type	Rec'd
ASFMRA	1230	ASFMRA 79 <sup>th</sup> Annual Meeting	Various	10	CE	Not Approved
International Right of Way Association	1231	Principles of Real Estate Law – Course 800	Lawrence D. Dupree	16	CE	Approved
International Right of Way Association	1234	Principles of Real Estate Engineering – Course 900	Lawrence D. Dupree	16	CE	Approved
Van Education Center	1232	On-Line National USPAP Update Course	Burton S. Lee	7	CE	Approved
The Columbia Institute	1233	FHA Today, No. 114	Various	8	CE	Approved
Allterra Group, LLC	1235	2008 Legislated & Regulatory Updates/Chief Appraiser Panel	Various	7	CE	Approved
Allterra Group, LLC	1236	2008 Keynote/Valuation Visionaries	Various	7	CE	Approved
NAIFA	1239	Appraising in the Foreclosure Market	Mike Orman	7	CE	Approved
NAIFA	1238	11.8a Calculating Gross Living Area using ANSI Standards	Mike Orman	4	CE	Approved
NAIFA	1237	Manufactured Home Guide – History & Construction	Mike Orman	4	CE	Approved

## LEGAL REPORT

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**John T. Jordan** (approved 7/08) - signed Consent Order agreeing to pay a \$500 civil penalty and to take a 15 hour USPAP course within 90 days after the effective date of the order, due to his admitted violations of SR 2-3, Tenn. Code Ann. §§ 62-39-326(5) and 62-39-329, and Tenn. Comp. R. & Reg. 1255-1-.01(2) by failing to include signed certifications on four appraisal reports regarding which he was the supervising certified general appraiser, and which were submitted to the Commission for experience audit by a certified residential appraiser who was applying for an upgrade.

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### 1. **L08-APP-RBS-2008010371 No Reviewer necessary**

Respondent entered into a consent order in June of 2007 wherein he was found to have violated several provisions of USPAP, and Tennessee law in his appraisal of 27 lots located at Second phase Wooddale Subdivision, Memphis, TN 38118. This prior consent order required Respondent to complete the following courses (and to submit for review 2 appraisal reports performed after the courses were completed) : a 30 hour single family residence course; a 15 hour USPAP course; and an advanced report writing course. Respondent had not completed these requirements by late April of this year, and in May the Commission recommended a consent order requiring Respondent to pay a \$1,000 civil penalty, and placing him on probation for 6 months in which he was to be required to have a certified general appraiser sign and send in for review all of his reports prepared during that period, and wherein he was to ensure completion of all of the specific requirements of the June, 2007 consent order by June 30, 2008 or his license would be immediately suspended until he did comply. A notice of charges (formal proceeding) was filed against Respondent in late July of this year due to his failure to comply.

Respondent has informed counsel for the Commission that he was unable to complete the requirements of the June, 2007 consent order due primarily to his age, and given the lack of business he was experiencing, he desired to not practice any further and surrender his license. Respondent has signed an Agreed order agreeing to pay a \$100 civil penalty, and to voluntarily surrender his license permanently in lieu of the State taking no further action in the pending formal proceeding. Respondent has paid the \$100 civil penalty and has been very cooperative with staff and with counsel even though he has not been able to comply with the terms of the June, 2007 consent order.

#### **Prior Complaint / Disciplinary History:**

199902015 Closed with Letter of Warning – Reporting Inconsistencies

200317508 Dismissed

200504395 Closed – Alleged fraudulent activity

200705098 Closed – Consent order – terms were not fulfilled.

**Recommendation and reasoning:** Staff and counsel for the Commission recommend that the Commission approve the proposed agreed order signed by Respondent providing for the permanent voluntary surrender of his license and payment of the \$100 civil penalty due to the

Respondent's acknowledgement of his inability to comply with the prior consent order primarily because of his age.

**Vote:** Mr. Flowers made the motion to accept the recommendation and Mr. Phillips seconded the motion. The motion carried unopposed.

## **2. L08-APP-RBS-2008011541 Commissioner Headden was the Reviewer**

The Complainant, HUD/FHA, stated in its letter of complaint that it imposed an education sanction against the Respondent due to failing to report deferred maintenance and, further, failing to satisfy applicable assignment conditions for which FHA was an intended user. The specific deferred maintenance listed was on outbuildings which had peeling paint – potential lead base paint hazards being built prior to 1978. The appraisal was not “subject to” correcting this paint issue.

The Respondent stated in his response letter that, “I was issued an education sanction by the Department of Housing and Urban Development on 3/27/2008. This violation is a supplemental guideline and not a USPAP violation and only education was required with no removal from the HUD roster. There were no value or analytical or disclosure and reporting questions at issue.” The Respondent included with his response a copy of the appraisal, a copy of the completion of the education requirement by HUD (Appraising FHA Today), a copy of the contract and additional file notes.

**Prior Complaint / Disciplinary History:** None

**Recommendation and reasoning:** Mr. Headden considers that since the Respondent was required by HUD to complete additional education to remain on the HUD approved appraiser roster due to Respondent's violations of the Supplemental Standards Rule, it is recommended that this complaint be dismissed since this matter has already been adequately resolved between HUD and the Respondent.

**Vote:** Mr. Woodford made the motion to accept the recommendation and Mr. Phillips seconded the motion. The motion carried unopposed.

## **3. & 4. L08-APP-RBS-2008010991 & 2008011041 Commissioner Phillips was the Reviewer**

The first complaint file involves subject property that is a 4 year old, 2 unit office building. This complaint was filed anonymously and included allegations the Respondent failed to analyze recent market data; omitted the sales comparison approach; failed to analyze comparable site sale data; inappropriately applied depreciation or misreported; failed to apply the income approach correctly; failed to support rent conclusions, occupancy/vacancy rates; omitted lease information/analysis; omitted expense analysis; and failed to summarize support for market rent and capitalization rate.

The report has an effective appraisal date of January 11, 2006. The area analysis is outdated and reflective of the area as of 1999. The respondent submitted an update area analysis to TREAC with his answer to this complaint. It has no effect on the original report since it was not part of the report delivered to the client. The Respondent presented five land sales, ranging from a low of

\$363,372 to a high of \$618,644 per acre and arrives at a per acre value for the subject of \$477,000 per acre without an analysis or explanation. In addition, the Respondent indicated an effective age for the main property and the site improvements at 4 years. It is highly unlikely the both would have the same effective age.

The Respondent failed to provide or analyze rental data, operating expenses, or support for the derivation of the overall capitalization rate. The capitalization rate was developed from a mortgage-equity analysis and debt coverage ratio, but there is no support for the equity rate, debt coverage rate, or the mortgage rate. These components must be supported from the market. The Respondent states, "Net Operating Income is not net of interest or income taxes, but has had depreciation charged since this is the estimated market value of the Going Concern." The Respondent could not explain the meaning of this statement and he stated it was left in from another report.

The appraisal report has numerous errors of omission and commission. There is not adequate market data or analysis to make the subject appraisal credible. A property in this value range requires adequate supporting market data and an in depth analysis to provide a supported value indication.

The second complaint file involves a tract of 10.47 acres situated in Pigeon Forge, TN, and improved with a large church building, metal clad fellowship hall, open pavilion and amphitheater and paved parking lot. This complaint was filed anonymously and included allegations the Respondent failed to summarize the cause for the effective date being after the date of inspection or changing the client information on an older appraisal; failed to analyze the current purchase agreement terms; over-valuing a non-residential property (church); misreported tax information on a tax exempt property; failed to analyze recent market data; failed to correctly employ the cost approach to value pertaining to depreciation; failed to analyze/summarize the highest and best use; misreported the approaches to value applied and obsolescence applicable; misreported subject information in the income approach; made errors of omission or commission in the appraisal report; included an expense ratio for leased property on a church where churches are not typically leased; and failure to support conclusions of value for PGI, management, and reserves.

The Respondent indicated on Page 2 of his report the intended use of the appraisal was to provide the information regarding estate settlement as compared to Page 8 where he indicated the appraisal was for loan consideration. The Respondent indicated on Page 12 that the report was completed on September 30, 2005 which is prior to the effective date of the appraisal of May 17, 2006. The Respondent indicated that the September date was left in from another appraisal. The appraiser stated, "the subject is under contract for the sum of \$6,100,000 and based on the analysis of the area the price appears below market value." The Respondent failed to adequately analyze the contract and present market sales to support his opinion that the contracted price is below market value.

The Respondent indicated that the total assessed value at 40% was \$963,080. The Respondent indicated that this amount was from a previous report. The report has an effective appraisal date of May 17, 2006. The area analysis is outdated and reflective of the area as of 1998. The Respondent submitted an update area analysis to TREAC with his answer to this complaint. It has no effect on the original report since it was not part of the report delivered to the client. The



Respondent indicated that a portion of the subject site is located in a flood hazard zone as shown on the attached Pigeon Forge FEMA Map panel map. No flood map is included in the appraisal. In addition, there is no adjustment for this factor in the land analysis. This factor is not addressed in the highest and best use. There is no statement or analysis to determine if the subject has excess land, since it has over 10 acres of land.

Considering a complex property in the value range of the subject, the highest and best use should be more comprehensive. There is no mention or analysis to address that a portion of the subject is in a flood zone and the possibility that there is excess land area. The appraiser presented six land sales before adjustments, ranging from a low of \$161,994 to a high of \$914,286 per acre. After adjustments, the land sales range from a low of \$186,834 to a high of \$680,662 and arrives at a per acre value for the subject of \$396,000 per acre without an analysis or explanation. In addition, the Respondent indicated an effective age for the main and the site improvements at 8 years. It is highly unlikely the both would have the same effective age.

The Respondent failed to provide or analyze rental data, operating expenses, or support for the derivation of the overall capitalization rate. The capitalization rate was developed from a mortgage-equity analysis and debt coverage ratio, but there is no support for the equity rate, debt coverage rate, or the mortgage rate. These components must be supported from the market. The appraisal report has numerous errors of omission and commission. There is not adequate market data or analysis to make the subject appraisal credible. A property in this value range requires adequate supporting market data and an in depth analysis to provide a supported value indication.

**Prior Complaint / Disciplinary History:**

No complaints other than these two matters.

**Recommendation and reasoning:** Due to the significant violations cited above and failure of the Respondent to meet the Competency Rule, it is Commissioner Phillips' recommendation that both complaints be combined, that a civil penalty of \$1,000 be imposed, and that the Respondent be downgraded from a Certified General Appraiser to a Certified Residential Appraiser for six months and indefinitely until he:

1. Completes and passes a 30 hr. General Appraiser Sales Comparison Approach course.
2. Completes and passes a 30 hr. General Appraiser Income Approach course.
3. Completes and passes a 30 hr. General Appraiser Site Valuation and Cost Approach course.
4. Submits to Administrative Director 3 appraisal reports chosen by said Director for review and determined to be USPAP compliant by the Director, from a 60 day log of commercial appraisals submitted by Respondent where such appraisals were performed under the supervision of a certified general appraiser.

None of the aforementioned courses would count toward Respondent's continuing education credits. If these three commercial reports failed to meet current USPAP guidelines, the Respondent would continue as a Certified Residential Appraiser. If this process does not work to get the Respondent back to a qualified Certified General Appraiser, the Respondent would have the option to go through the process of becoming a Certified General Appraiser under the 2008 Guidelines.

It is further the recommendation of Commissioner Phillips that the Respondent be offered the above proposal in the way of a proposed consent order, and that if he does not accept it, then we recommend that a formal proceeding be commenced. The Respondent has already been provided with an informal conference in late-August of this year.

**Vote:** Ms. Avers stated during discussion that she did not want to be the reviewer assigned to review this matter. It was recommended that the recommendation be approved with the amendment that Mr. Phillips be the reviewer. Mr. Headden made the motion to accept the recommendation and Mr. Flowers seconded the motion. The motion carried unopposed.

## **5. L08-APP-RBS-2008011691 Commissioner Carter was the Reviewer**

The appraisal under review was found to be complete and the work material well documented. The data provided in the report was adequate and the methods and techniques used were appropriate to form an opinion of value. The analyses, opinions, and conclusions were appropriate and reasonable and Commissioner Carter found no reasoning for disagreement with the final reconciliation. There were minor oversights or inaccuracies in the report noted which are considered by Commissioner Carter to be incidental and which have no bearing on the value conclusion but are noted below for the record. There were no USPAP violations found in the report.

1) The "Improvements" section of the appraisal shows the garage marked as "Attached" this is incorrect. The garage is located in the basement area underneath the base of the house as shown in the sketch and should be marked in the report as "Built-in".

2) The date of the appraisal report was not stated.

The Complainant contends the value was over-stated which, according to the sales comparison approach is not the case. As of the effective date of the appraisal there are sufficient sales to support the value stated in the appraisal. Commissioner Carter did conduct a search of sales for the same time frame which indicated a similar range in value as the appraisal. The subsequent appraisal on the property was performed five months later and indicated a lower value. Commissioner Carter did conduct a search of sales for the same time frame as the second appraisal which indicated a similar range in value as that appraisal. The difference in the two values represents a fluctuation in the market that is representative of residential properties as a whole over the broader spectrum of the residential market.

It should be noted that the owner is claiming the purchase of the property was from a family member and included \$20,000 of equity gifted to her. This information should have been provided to the appraiser by the buyer at inspection or from the lender. Regardless of the intended gift, the sales at that time indicated a value similar to the stated sale price and the claim of an inflated value are unfounded. Both appraisals submitted show the subject as listed and sold through the MLS service which suggests the property was exposed to the market through a realtor for the indicated sale price of \$185,000. The current tax card shows the transaction as a qualified sale.

**Prior Complaint/Disciplinary History:** None.

**Recommendation and reasoning:** Commissioner Carter considers that the Respondent's report was complete and that the analyses, opinions, and conclusions were appropriate and reasonable. Accordingly, Commissioner Carter recommends that this complaint be dismissed.

**Vote:** Mr. Phillips made the motion to accept the recommendation and Mr. Headden seconded the motion. The motion carried unopposed.

**6. L08-APP-RBS-2008012301 Commissioner Woodford was the Reviewer**

This complaint file was opened by administrative staff due to information which led staff to believe Respondent may have been engaging in the unauthorized practice of appraising while his license had lapsed for failure to timely renew. Respondent's license expired at the end of last year and he realized at that time he had not obtained all required continuing education. He claimed he had a phone conversation with someone in the administrative office and was told that he could have an additional 6 months in order to complete his continuing education. There is no documentation of such a phone call and no one in the administrative office indicated to Respondent that he could continue to practice on an expired license. On May 27, 2008, Respondent sent a memo to the administrative office with the particular continuing education courses attached, and requested that his license be renewed. By May of this year, we learned that the Respondent had performed approximately 50 appraisals for a certain bank, and on May 28, the Respondent stated he had ceased and desisted from performing further appraisals after being told to do so by Ms. Avers. We requested 10 of the appraisals from Respondent's log of those conducted between January and late May of this year and Respondent submitted an affidavit on July 16, 2008 stating he was still not practicing.

The 10 appraisal reports and the file as a whole were referred to Commissioner Woodford for review, and in the 10 reports, Commissioner Woodford found a large number of troubling violations. Amongst other problems, Respondent provided no land sales data, maps or sketch sheets within these appraisals; he included no reasoning, explanations or summaries supporting the lack of adjustments, or different rates of adjustments applied to very similar comps; Respondent provided no way to verify sq. ft. in many of the reports; he provided no illustrations of the derivation of depreciation in the cost approach in many of the reports; he did not identify many of the comparable sales by address or location map; in the cost approach, he did not summarize within reports his reviews of recent lot sales and his site to total value ratios.

Commissioner Woodford found a common thread running through the Respondent's appraisals was the lack of information and analyses that would allow the reader to understand the reports properly. Especially bothersome was the Respondent's failure to use the income approach on income producing properties solely because the client requested that it not be used. The appraiser needs to determine what approaches are required to render a credible report, not the client. Respondent's misreporting sales dates by a year in at least one of the reports is considered misleading.

**Prior Complaints/Disciplinary History:** None.

**Recommendation and reasoning:** Commissioner Woodford is of the opinion that the Respondent be offered a consent order imposing a one (1) year suspension retroactive to January 1, 2008 through the end of this year for his unlicensed activity this spring and for his violations of USPAP set out above. This proposed consent order would also impose a civil penalty of \$1,000 and require him to complete a Residential Report Writing /Case Study course of at least 15 hours, before the suspension is lifted. If Respondent rejects this proposal, a formal proceeding should be commenced.

**Vote:** Mr. Flowers made the motion to accept the recommendation and Mr. Phillips seconded the motion. The motion carried unopposed.

**7. L08-APP-RBS-2008013791 Commissioner Headden was the Reviewer**

The Respondent was to complete a mobile home appraisal report form for the client based on a request to determine if the market value would be sufficient to secure the loan. At the time of the initial request the client did not know which type of loan would be used, but gave the Respondent an FHA case number because that was the most likely loan type. When the client did determine the loan type necessary, the client needed the form changed quickly. The Respondent did not change the report prior to a complaint being filed, but has since generated a report on the correct form for FHA loan purposes. Because the Respondent put the FHA case number on the initial report, the requirements of HUD/FHA should have been known to the Respondent as an assignment condition as is required in the SCOPE OF WORK RULE of USPAP.

**Prior Complaints/Disciplinary History:** None.

**Recommendation and reasoning:** Commissioner Headden recommends a letter of warning be issued to Respondent pertaining to compliance with assignment conditions of Government Sponsored Enterprises (GSE's) and properly identifying the problem to be solved in order to determine the appropriate scope of work in an assignment prior to completing any appraisal report.

**Vote:** Mr. Flowers made the motion to accept the recommendation and Mr. Phillips seconded the motion. The motion carried unopposed.

**8. L08-APP-RBS-2008014091 Commissioner Phillips was the Reviewer**

A consumer complained against Respondent alleging that Respondent undervalued his apartment, and misreported the age, garage attachment, driveway materials, and appliances, amongst other things. Respondent indicated in his response that:

- he relied on courthouse data for the date the home was built, and that the effective age was only 1 year; the garage is detached and the connection is porch/breezeway; he listed what he considered to be the most distinctive view and listing all views available is redundant and does not enhance the appraisal process;
- he did not list refrigerators, washers, dryers or other appliances which are negotiable and which might remain with the house in a sales transaction; the appraisal states that the driveway is paved and the photos reflect it is concrete; he used Marshall & Swift as a guide and also relied upon a local contractor;

- the ceiling height of the living room in the main house is 29 ft.; with a vaulted foyer as well as many other features which make it a more complicated framing package, and with complicated roofing systems, larger and greater number of windows, cabinetry, and a number of fixtures, and that the cost estimates reflect these differences.

**Prior Complaint / Disciplinary History:** 941868 (Dismissed); 200501188 (Closed with Consent Order \$300)

**Recommendation and reasoning:** Commissioner Phillips found no substantial USPAP violations, but was concerned with Respondent's presentation of the cost of the studio apartment in the cost approach at \$84,000 new and \$83,160 depreciated, as compared to a contributory value of \$65,000 in the sales comparison approach. As to the main house, Respondent indicated a total value of \$751,900 in the cost approach, as compared to \$675,000 in the sales comparison approach with no explanation as to the wide spread in these two approaches, as should have been provided. It appears to Commissioner Phillips that the cost of new construction is outpacing the market, thus causing external depreciation. Commissioner Phillips also found that Respondent mischaracterized the report as a "Complete Appraisal Analysis" - apparently without realizing that this Characterization was retired as of July 1, 2006.

Based on these minor violations, Commissioner Phillips recommends counsel for the that a letter of warning be issued to the Respondent, and that he be instructed to review the current edition of USPAP.

**Vote:** Mr. Flowers made the motion to accept the recommendation and Mr. Carter seconded the motion. The motion carried unopposed.

#### **9. L08-APP-RBS-2008014211 Commissioner Wade was the Reviewer**

This complaint was filed by a consumer which alleged that the Respondent under-valued his residence at \$355,000 when he had a previous appraisal one year earlier for \$395,000. He stated that he did not understand how the house could have a depreciation of \$30,900 (cost approach) if the market is stable and should show future appreciation. He stated that the Respondent valued the property at \$175.55 for the main level (price per square foot of property) and not give any value for the basement. He further added that there is a 200 square foot sun-room what is heated/cooled, which was not included in the living area, but stated it was part of the contact for the home. He stated the site value given was very low and that the Respondent did not consider that the lot sits at the highest point in the subdivision with a panoramic view of the mountains.

**Prior Complaint / Disciplinary History:** 200500262 (Closed with Consent Order \$1,000 civil penalty and a course in Appraisal Methods); 200800562 (Closed with a letter of instruction regarding consistently reporting effective age and applicability of approaches to value.

**Recommendation and reasoning:** The Respondent makes the statement within the report that "This appears to be an above market value transaction" without providing an analysis of his reasoning. He indicates under One-Unit Housing Trends that the property values are increasing, but contradicts this opinion in Neighborhood Description by stating that "Neighborhood value trends are expected to remain stable for the foreseeable future with gradual increases." In Market

Conditions, Respondent states that property values within the neighborhood appear to be increasing with supply and demand approaching balance.” He did not accurately or adequately describe the subject improvements in the Foundation Section, and he failed to report the percentage of finished and unfinished basement.

Respondent made no adjustments for the differences in quality of sale 1 and the subject, which could account for the lower indicated value produced by sale 1. According to CRS, sale 1 is an “average” quality structure. According to CRS, comparable sale 1 was constructed in 2006, comparable sale 2 in 2004, and comparable sale 3 in 2006. Since the age of the comparable dwellings are inaccurately reported, the age adjustments may be incorrect. Respondent uses a \$30.00 per square foot adjustment for the difference in the size of the subject dwelling and the size of the comparable sales. It appears to Commissioner Wade that this may be a low unit adjustment for a “good quality” dwelling, which could affect the Adjusted Sales Price of the Comparables and final opinion of Market Value.

It was not possible to follow the reasoning for Respondent’s adjustments for the basement areas due to insufficient information. He uses an adjustment of + \$27,900 to each of the sales. According to CRS, sale 3 has a 1,381 square foot unfinished basement, which Respondent does not mention in the grid. While most lenders require that comparable sales close within 6 months to 1 year from the effective date of the appraisal, CRS indicates a property located at 2717 Raylee Drive, Blount County Map 058M B 007.00, sold on 4/27/2008. The property sold for \$358,405.00 or approximately \$142.39 per square foot. According to CRS, the dwelling has an unfinished basement containing 1,285 square feet that was not mentioned by the appraiser. Being located on the same street, it would have been pertinent for Respondent to mention the sale in his report.

Respondent did not accurately report and analyze the prior sale and transfer history of the subject property, and did not properly reconcile the three approaches to value. In the comments, he stated that the cost approach was considered, but not applicable in this report due to the age of the dwelling. However, he used the cost approach in the report.

In the cost approach, Respondent does not mention specific land sales in the area as support of the land value. The dwelling square foot cost of \$156.9164 could be considered misleading, because the appraiser does not break out the finished and unfinished basement area. (Note: the basement is broken down on the supplemental cost approach page) Also, the “As-is” value of Site Improvements is not included on either of the sheets. Finally, Respondent did not develop an opinion of reasonable exposure time linked to the value opinion.

Based on all of the foregoing, and the facts that the Respondent has received a letter of instruction, and has been disciplined previously by consent order in two prior complaints, Commissioner Wade recommends that a formal proceeding be initiated against Respondent as to this third complaint.

**Vote:** There was some discussion of offering settlement prior to formal hearing. The recommendation was revised to offer a consent order to include a \$3,000 civil penalty, thirty (30) hours of Residential Report Writing course(s) with successful completion of the examination(s) [can be taken as two 15 hour courses]. The Respondent should be offered the option of an informal conference. If settlement is not agreed upon a formal hearing was pre-authorized. Mr. Flowers made the motion to accept the recommendation and Mr. Headden seconded the motion. The motion carried unopposed.

## **10. L08-APP-RBS-2008015411 Commissioner Woodford was the Reviewer**

This complaint was entered by the Tennessee Real Estate Appraiser Commission due to a report obtained during a trainee experience interview. The Commission member that reviewed the experience was concerned that the appraisal report failed to include an analysis of the market area and report proper neighborhood information (Respondent stated that neighborhood was only 25-75% built up when it is actually over 75% built-up), failed to support effective age opinions (12 years for subject and all 3 sales), misreported design of house (Respondent stated 2 story instead of 1 and ½ stories), used a sale almost 1 year old in a metropolitan area, misreported the neighborhood boundaries/roads for Frayser and not the White Station area of Memphis, failed to support lack of adjustment made for garages to comparables, and failed to develop a reasonable opinion of exposure time.

The Respondent stated in his response letter that:

1. "Even though the comments are not totally wrong, we agree they should have been more tailored to the subject neighborhood. We will take immediate action to insure that this type of clerical error does not occur in the future.
2. We agree that the over 75% box should be checked in most situations when in a metropolitan area. However in this case, there is a large area just west and north (less than ½ mile) of the subject property that is not built up. There also appears to be a couple of small lakes and at least two parks in close proximity. Because of this, it was our opinion to mark the upper end of the 25% to 75%.
3. We did not have sufficient market data that indicated an adjustment was a requirement in this case. Also, we did look at each of the comparables and in our opinion determined that they appeared to be of similar condition as the subject. The actual age for all is very similar and the neighborhood in general was very well kept around each property. We will put more verbiage in our reports in the future to explain when we deem no adjustments to be necessary.
4. The actual calculated square footage would indicate a 1 and ½ stories. We will be more diligent in making sure this type of clerical error does not occur in the future.
5. Several comparable sales were considered. The three selected were among the more proximate and appeared to us to have more similar characteristics including age, size, and amenities than some of the more current sales. Even though sale number one is an older sale, it is within the supplemental standards of FNMA.
6. We agree that the boundaries are in error. Corrective steps have been taken to insure that this is stated more accurately in future reports and that this type of error does not occur.
7. In this case, the subject carport was much nicer than a typical carport. It was larger than typical, had extra open storage, and was partially enclosed. Also, visual observation indicated that the car storage for the subject and the comps appeared to be equal in value so we decided that no adjustment was necessary. We agree that either an adjustment

should have been made or an explanation should have been added to explain why not. We will implement immediately.

8. The subject is located less than one half mile from I-240 to the east and north, US highway 72 to the south and state highway 57 to the south. All of these provide access to the subject and the subject neighborhood. They also provide easier access to such things as shopping, schools, and medical facilities from the subject and appear to be a very important part of the subject marketing area.
9. We were told in our last USPAP class that exposure time did not have to be in every report. Because of this information, the type of loan, and the fact that exposure time was not required by the intended users, it did not appear to be a requirement for this particular report.

**Prior Complaint / Disciplinary History:** None

**Recommendation and reasoning:** Summary - The problems pointed out by the complaint and verified by Commissioner Woodford include a failure to properly report the neighborhood (likely due to report cloning), the failure to accurately describe the design of the house which was a 1 ½ story as opposed to 2 story. Commissioner Woodford also noted that Sale No. 2 is reported as a two story, while it appears to be a one story. In addition, the assumption of a twelve year effective age for the subject and all comparables is not discussed (the subject and all 3 comparable sales were reported to be between 41-45 years old with no adjustments as to age), and car storage is not adjusted nor discussed.

It is Commissioner Woodford's opinion that the primary violation relates to SR 1-1 (c), which requires that an appraiser not render appraisal services in a careless or negligent manner, such as by making a series of errors, that although individually might not significantly affect the results of an appraisal, in aggregate affects the credibility of those results. Commissioner Woodford believes that is the case in this appraisal, but does not think that value or the results are necessarily incorrect. However, the credibility (method of supporting that opinion) has been mollified and disaffected by the lack of the proper neighborhood identification, lack of proper design description concerning the subject and Sale No. 2, and the lack of adjustment for car storage or comment for lack of any adjustment.

**Recommendation** - This recommendation takes into account the issues set out above relative to the various standard rule issues, as well as the Respondent's response, and recognizes that three appraisals were reviewed prior to the formulation of the complaint and that the complaint is issued only for one report, inasmuch as the other two reports were considered acceptable. The issue is not one of the appraiser not knowing, so an application of additional education is not considered needed. The issue relates to quality control of reporting, which appears to be an item that the appraiser understands but did not apply in this appraisal. Based on those observations, Commissioner Woodford is recommending the appraiser receive a letter of warning relative to these items.

**Vote:** Mr. Flowers made the motion to accept the recommendation and Mr. Phillips seconded the motion. The motion carried unopposed.



**11. L08-APP-RBS-2008015401**

**Mr. Wade was the Reviewer**

The Complainant, a mortgage lender, alleged, amongst other things, that the Respondent undervalued a residential property, failed to analyze and report the analysis of the previous sale history of the subject property, failed to report upgrades (if any) to the subject, failed to adjust for superior sales (brick), and that he failed to use sales that were closer in proximity and more recent sales when such were available.

**Prior Complaint/Disciplinary History:** 2002070741 (Closed with Agreed order - \$1,500 civil penalty and 30 day suspension)

**Recommendation and reasoning:** In the opinion of Commissioner Wade, the report by The Respondent is incomplete due to substantial errors of omission or commission that significantly affects the appraisal. The accuracy of the data is in question. The appraisal services were rendered in a careless or negligent manner, such as by making a series of errors that in total may affect the value conclusion.

The major errors or commissions noted are as follows:

The appraiser did not provide a complete analysis of the contract of sale.

The appraiser did not discuss why the subject's value is above the predominant neighborhood value.

The appraisal provided did not discuss neighborhood property values, competitive properties or marketing time.

The appraiser's statement on size is contradictory at 0.23 acres and 21,553 square feet.

The appraiser did not explain why the effective age is 40 years less than the stated actual age.

The appraiser failed to report upgrades, if any, to the subject dwelling.

The comparable sales were not accurately described or analyzed in the report in regards to quality of construction and condition. (Subject was not renovated; comps were renovated.)

The appraiser did not provide an analysis of the prior sale.

The report did not address or properly reconcile the three approaches to value.

The appraiser did not determine an opinion of reasonable exposure time.

Possible fraudulent report change. (Respondent submitted an additional unsigned appraisal report along with a copy of the original report with his response, where the unsigned report had different photos of the subject and of the comps, and an additional supplemental sheet with comments.)

Based on all of the foregoing, the Respondent's prior Consent Order, Commissioner Wade recommends that a formal proceeding be commenced seeking severe discipline against the Respondent's certificate as a certified residential appraiser.

**Vote:** Mr. Woodford went on the record to state that the mortgage company decision should not be a part of his decision. There was some discussion of offering settlement prior to formal hearing. The recommendation was revised to offer a consent order to include a \$3,000 civil penalty; thirty (30) hours of Residential Report Writing course(s) with successful completion of the examination(s) [can be taken as two 15 hour courses]. The Respondent should be offered the option of an informal conference. If settlement is not agreed upon a formal hearing was pre-authorized. Mr. Flowers made the motion to accept the recommendation and Mr. Headden seconded the motion. The motion carried unopposed.

## **II. PROPOSED CHANGES TO CHARACTER QUESTIONS ON APPLICATIONS**

Administrative staff and counsel for the Commission believe it is necessary to make certain revisions to certain questions as included on the Character Section of the applications for registered trainee, and for licensed, certified residential and certified general status.

The proposed changes involve the need for us to be able to obtain copies of all discipline imposed against an applicant's appraiser or other professional licenses, to know and obtain copies of all pending disciplinary complaints and pending charges against an applicant's appraiser or other professional licenses, and to obtain copies of any and all final administrative disciplinary orders entered by any other state licensing board where an applicant is charged with some fraud.

We have also added language to the general information section underneath the questions informing applicants that it is their responsibility to provide the Commission with complete answers and complete documentation upon which any "Yes" answer to any of these questions is based, in order to take the responsibility and burden off of the Commission and the staff to ask all of the "right" questions of an applicant. In some instances, an applicant could argue that if he or she wasn't asked a particular question, then we cannot later contend that a false, incomplete or misleading answer was given.

We have provided copies of the current page including the character questions from the registered trainee application and the proposed revised page for your consideration. If approved, the same changes will be made to the character pages for all other categories of licensure/certification.

We recommend that the Commission approve these changes.

**Vote:** Mr. Headden made the motion to accept the recommendation and Mr. Flowers seconded the motion. The motion carried unopposed.

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Being no further business, the meeting was adjourned at 12:05 p.m.

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Nikole Avers, Administrative Director

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Chairman, James E. Wade, Jr.